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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/980,727	07/08/2002	Hubert Rein	228.1010	8812
23280	7590	02/11/2004	EXAMINER	
DAVIDSON, DAVIDSON & KAPPEL, LLC 485 SEVENTH AVENUE, 14TH FLOOR NEW YORK, NY 10018			OH, SIMON J	
			ART UNIT	PAPER NUMBER
			1615	

DATE MAILED: 02/11/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

<b>Application No.</b> 09/980,727	<b>Applicant(s)</b> REIN ET AL.	
<b>Examiner</b> Simon J. Oh	<b>Art Unit</b> 1615	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1)  Responsive to communication(s) filed on 10 November 2003.
- 2a)  This action is **FINAL**.
- 2b)  This action is non-final.
- 3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4)  Claim(s) 1-18 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5)  Claim(s) \_\_\_\_\_ is/are allowed.
- 6)  Claim(s) 1-18 is/are rejected.
- 7)  Claim(s) \_\_\_\_\_ is/are objected to.
- 8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9)  The specification is objected to by the Examiner.
- 10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All   b)  Some \*   c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1)  Notice of References Cited (PTO-892)
- 2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 12/24/03.
- 4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5)  Notice of Informal Patent Application (PTO-152)
- 6)  Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Papers Received***

Receipt is acknowledged of the applicant's amendment, response, and petition for extension of time, all received on 10 November 2003. Receipt is acknowledged of the applicant's information disclosure statement and Exhibit A, both received on 24 December 2003.

### ***Claim Objections***

The objections to Claims 5, 8, and 17 have been withdrawn with the amendment of those claims.

### ***Claim Rejections - 35 USC § 112***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

The rejection of Claims 2 and 11 under 35 U.S.C. 112, second paragraph, as being indefinite is hereby withdrawn.

The rejection of Claim 19 under 35 U.S.C. 101 and 35 U.S.C. 112 has been rendered moot with the cancellation of that claim.

### ***Claim Rejections - 35 USC § 102***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

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The rejection of Claims 1-19 under 35 U.S.C. 102(b) as being anticipated by Lentz *et al.* is hereby withdrawn.

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 5, 8, 9, 14, 17, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lentz *et al.*

***Response to Arguments***

Applicant's arguments filed 10 November 2003 have been fully considered but they are not persuasive.

Applicant's arguments do not comply with 37 CFR 1.111(c) because they do not clearly point out the patentable novelty which he or she thinks the claims present in view of the state of the art disclosed by the references cited or the objections made. Further, they do not show precisely how the amendments avoid such references or objections.

As disclosed in the Lentz *et al.* document, the controlled-release starch compositions comprise a melt made from a starch/water mixture and an active ingredient, with the starch processed in such a way to render it "destructured". The examiner interprets this condition such that it reads on the instant claim limitations of an amorphous or partially amorphous starch. Processing techniques that may be used to produce the disclosed dosage forms extrusion and co-extrusion. In the view of the examiner, this disclosure reads on the claims so as to render them

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obvious in view of the prior art. Although the applicant has narrowed the scope of the present claims, particularly with the use of the phrase “consisting essentially of”, it is the position of the examiner that such a limitation cannot overcome what has been disclosed by the prior art unless the applicant can show through the submission of data that other components that may be included under the disclosure of the prior art would be detrimental to the instantly claimed method and to the function of the instantly claimed composition.

### *Conclusion*

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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*Correspondence*

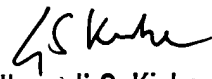
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Simon J. Oh whose telephone number is (703) 305-3265. The examiner can normally be reached on M-F 8:30 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K Page can be reached on (703) 308-2927. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Simon J. Oh  
Examiner  
Art Unit 1615

sj0

  
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Primary Examiner,  
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